IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9651 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

LALJIBHAI GARBADDAS THAKKAR

Versus

STATE OF GUJARAT

Appearance:

MR NM KAPADIA for Petitioner

GOVERNMENT PLEADER for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 13/10/2000

ORAL JUDGEMENT

Rule. Mr.K.T.Dave, Ld.AGP waives service of rule for the respondent. With the consent of learned counsel for the parties the matter is taken up for final disposal.

2. What is challenged in this petition under Article 226 of the Constitution is the non-payment of pension to a freedom fighter from the date of his entitlement till the date of the order sanctioning him the pension i.e. from 16.8.1990 to 1.8.1999. In view of several decisions, particularly, in Mukundlal Bhandari vs Union of India in AIR 1993 SC 2127, there is no doubt that whenever freedom fighter is found to be eligible to get pension, the benefit should be made available to him from the date of his entitlement.

3. Mr.N.M.Kapadia, Ld.advocate for the petitioner, however, submits that since the petitioner has not been paid arrears of pension with effect from the date of his application, the respondents should be saddled with penal interest as the respondents can not act in such an arbitrary manner with old freedom fighters compelling them to knock the doors of this Court for getting what is due and legitimate and what is legitimately payable to them in view of the law laid down by the Honourable Supreme Court in the case of Mukundlal Bhandari (supra). He has further prayed for exemplary costs.

4. Mr.K.T.Dave, Ld.AGP for respondents is not in a position to dispute the above legal position but he submits that the additional liability to pay interest on arrears of pension from the date of application will be a heavy burden on the State Government and that is what dissuades the authorities from acceding to the request for payment of pension from the date of application.

5. Having heard the learned counsel for the parties, it appears to the Court that even if the State had any reservations about payment of interest on arrears, nothing prevented the State from atleast paying the arrears of pension. It also appears to the Court that the delay in payment of arrears of pension should result into liability being foisted on the officer/employee responsible for the delay by such employee/officer being required to pay 18% p.a. interest since the Government does not prepare to award any interest for the interregnum. Hence, the interests of justice would be served if the petition is allowed in terms of the following directions:

(i) The respondent shall pay the petitioner the arrears of pension under Freedom Fighters' Pension Scheme with effect from the date on which the application was made (i.e. from 16.8.1990 till the date of pension order (31.7.1999). This direction shall be complied with within one month

from the date of receipt of the writ of this Court or a certified copy of this judgment, whichever is earlier.

(ii) If the above direction is not complied with the respondent shall pay interest at 15% p.a. from the date of receipt of the writ of this Court or a certified copy of this order, whichever is earlier, till the date of payment of arrears and the respondents shall recover the same from the officer/employee responsible for the delay.

(iii) The respondent shall pay the petitioner costs of this petition, which are quantified at Rs.5000/alongwith the arrears of pension from 16.8.1990 to 31.7.1999.

(iiv) Whenever a freedom fighter who has been granted pension under the Freedom Fighters' Pension Scheme with effect from the date of the order approaches the Government with a representation to pay him arrears of pension with effect from the date of application for pension as per the principle laid down by the Hon'ble Supreme Court in Mukundlal Bhandari vs. Union of India, AIR 1993 SC 2127 and if the applicant also undertakes to waive the interest for late payment of such arrears. the respondent shall pay such arrears within two months from the date of receipt of such representation. If, however, the respondent does not release the arrears of pension within two months as aforesaid, the respondent shall be liable to pay interest at the rate of 15% p.a. on the arrears with effect from the date of receipt of the representation till the date of payment of arrears and such interest may be recovered from the officer/employee who may be found responsible for the delay.

(v) In case the respondent does not comply with the aforesaid directions and any freedom fighter is required to approach this Court claiming the arrears between the date of the application for pension and the date on which the Government sanctioned the pension to a freedom fighter under the Scheme, the concerned officer/employee whose default requires such applicant to approach this Court shall be personally made liable to pay exemplary costs which shall be not less than Rs.5,000/- over and above liability to pay interest as aforesaid.

6. Rule is made absolute in terms of aforesaid directions with costs quantified at Rs.5000/- as per direction (iii) in the preceding paragraph.

13.10.2000 (M.S.SHAH,J)